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other insurance such as to avoid a policy. The contrary is held in *Pitney* v. *Glens Falls Ins. Co.*, 65 N. Y. 6; *Lewis* v. *Guardian Ins. Co.*, 87 N. Y. Supp. 525, 93 App. Div. 157, confirmed in 181 N. Y. 392; *New Orleans Ins. Ass'n.* v. *Holberg*, 64 Miss. 51, 8 So. 175. In none of these cases, however, was the amount of the renewal in excess of the insurance existing at the date of the policy.

JUDGMENTS—COLLATERAL ATTACK.—In an action to quiet title to certain lands a decree rendered on service by publication was pleaded in the answer as an adjudication of the said title in favor of the defendant. The affidavit on which such service was based failed to conform to the statutory requirements, the insufficiency of the affidavit affirmatively appearing on the record. *Held*, a decree entered on such service was void and subject to collateral attack.—*Gibson* v. *Wagner*, (Colo. 1913) 136 Pac. 93.

It is the general rule that there must be a strict compliance with statutes providing for servce by publication, since they are in derogation of the common law. *Pennoyer* v. *Neff*, 95 U. S. 714, 24 L. Ed. 565; *Tunis* v. *Withrow*, 10 Ia. 305, 77 Am. Dec. 117; *Week* v. *Rea*, 54 Wash. 424, 103 Pac. 462; *Gilmore* v. *Lampman*, 86 Minn. 493, 90 N. W. 1113, 91 Am. St. Rep. 376. Every fact must be shown in the affidavit which is necessary under the statute to give the right to an order for service by publication, otherwise the judgment is void. *Lumber Co.* v. *Johnson*, 196 Fed. 56; *Norris* v. *Kelsey*, 130 Pac. 1088 (Colo. 1913) See 11 MICH. L. REV. 607. But on collateral attack defects in the affidavit are generally held not to be jurisdictional, and the judgment will be upheld. *Cooper* v. *Reynolds*, 10 Wall, 308; *Matthew* v. *Densmore*, 109 U. S. 216; *Russel* v. *Work*, 35 N. J. L. 316; *Clay* v. *Bilby*, 72 Ark. 101, 78 S. W. 749; *Salisbury* v. *Cooper*, 69 N. Y. S. 258, 58 App. Div. 524; *Burnett* v. *McCluey*, 92 Mo. 230. See 10 MICH. L. REV. 240. But there is a respectable minority holding contra. *Greenvault* v. *Farmers & Mechanics' Bank*, 2 Doug. 498: *Empire Ranch & Cattle Co.* v. *Coldren*, 51 Colo. 115, 117 Pac. 1005. See *Johnson* v. *The North Star Lumber Co.*, 206 Fed. 604. Were it not for the fact that Colorado is committed to the minority view, this might be classed as one of those anomalous cases in which courts have permitted collateral attack to prevent an injustice, for here it appears the want of a proper affidavit had prevented the defendant therein receiving a copy of the summons or learning of the suit. Even in such cases and although the defect in the affidavit appears in the record, considerations of public interests, which are best subserved by a confidence in the stability of judgments, should conduce to the upholding of their validity as against collateral attack. Where opportunity is given by appeal or motion to vacate to set aside a judgment for defects—preliminary in the instant case—and no advantage is taken of the opportunity, the party aggrieved should be precluded from again contesting the validity of the judgment in a collateral proceeding.

MASTER AND SERVANT—CONSTRUCTION OF COMPENSATION ACT.—A claimant under the Workmen's Compensation Act, 1906, was employed as a boatswain on a steam fishing trawler and was remunerated by wages, maintainence, and poundage dependent on the profits of the fishing expedition. It was provid-

ed in the Act of 1906 that, "This act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits, etc." *Held,* by EARL OF HALSBURY, LORD MERSEY, and LORD PARKER OF WADDINGTON, (EARL LOREBURN and LORD ATKINSON dissenting)—that the claimant was remunerated by a share in the profits within the meaning of the above provision, and was therefore excluded from the Act and was not entitled to compensation. *Costello* v. *Owners of the Ship Pigeon,* (1913) A. C. 407.

The question as to who is a "workman" within the meaning of the Compensation Acts, especially in cases where the employee shares in the profits, is unsettled. It is most probably due to the opposing theories in regard to the construction of these acts. On the one hand it is maintained that they are derogatory to the common law and should be construed strictly, while the contrary premise is that they are remedial and therefore should be construed liberally. The decision in the principal case is undoubtedly based on a strict construction of the statute and is justified by other English cases. *Boon* v. *Quance,* (1909) 102 L. T. 443; *Admiral Fishing Co.* v. *Robinson,* (1910) 102 L. T. 203; *Aberdeen Steam Trawling & Fishing Co.* v. *Gill,* (1907) 45 Scotch L. R. 247; *Whelan* v. *Great Northern Steam Fishing Co.* (1909) 100 L. T. 913. As opposed to this view, it has been held that the injured person will be held to sustain the relation of a workman where there is an absence of any proof of partnership or joint adventure in the course of trading. *Jamieson* v. *Clark,* (1908) 46 Scotch L. R. 73; *Carswell* v. *Sharpe et al.* (1910) 47 Scotch L. R. 335.

NEW TRIAL—COMMENTS OF COUNSEL.—In a personal injury action which was being tried for the third time, the case depended almost entirely upon the credibility of the witnesses. Plaintiff's counsel in his argument to the jury, in referring to certain statements made by the opposing counsel and which reflected on the veracity of plaintiff's witnesses, said that he had canvassed the neighborhood and talked with witnesses, and that if the case was framed up, he (plaintiff's counsel) and not the witnesses, was responsible for it; that defendant's counsel had been unfair in keeping out testimony, and that he had unduly prolonged the trial by making technical objections which kept plaintiff out of justice. *Held,* prejudicial misconduct notwithstanding the trial court sustained an objection to these statements at the time they were made and expressly directed the jury to disregard them. *Appel* v. *Chicago City Ry. Co.,* (Ill. 1913) 102 N. E. 1021.

The courts are not all agreed that a reversal is proper where the trial court has sustained an objection to the improper remarks and has done all in its power to counteract their influence upon the jury. Taken literally, the holding of some courts would absolutely prevent a reversal in such cases. *Ry. Co.* v. *Parker,* 127 Ga. 471; *Kern* v. *Bridewell,* 119 Ind. 471; *Greenlee* v. *Greenlee,* 93 N. C. 278; *Traction Co.* v. *Parks,* Tex. 97 S. W. 510; *Perkins* v. *Guy,* 55 Miss. 153; *Kearney* v. *State,* 101 Ga. 803; *Grubb* v. *State,* 117 Ind. 277; *State* v. *Emery,* 79 Mo. 461; *Alabama R. R. Co.* v. *Frazier,* 93 Ala. 45. This unqualified statement of the doctrine is hardly justifiable on principle and what is perhaps the true rule and the one supported by the great weight